IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1277 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

R. N. DALAL

Versus

DIST. PRIMARY EDUCATION OFFICER

Appearance:

MR IM PANDYA for the Petitioner.

MR RA MISHRA for the Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 22/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KUNDAN SINGH)

This petition has been filed for quashing the order of District Primary Education Officer,

District Education Committee, Himmatnagar dated 30.12.1989 and the order of the District Education Officer, Himmatnagar dated 13.1.1992/4.2.1992 Annexures D and E to the petition.

2. The petitioner was working as a head clerk in the office of the respondent Sabarkantha District Panchayat. The petitioner was sanctioned house building advance of Rs. 45,000/- on 28th February, 1979 and Rs. 35000/- on 20th September, 1983. The amount of loan was required to be repaid in terms of the loan agreement and he was to purchase the house within stipulated period and he was required to pay the amount of loan in equal monthly instalments. The petitioner was also required to mortgage the house purchased by him. There was some irregularity in making payment of instalment and he could not mortgage theproperty within specified period of three months and the house was also required tobe insured. The documents were required to be produced before the authority concerned within stipulated period. Some irregularity was committed by the petitioner and the papers were also submitted within time and some instalment was also not deducted due to certain circumstances. As such, disciplinary proceedings were initiated against the petitioner and the authority dismissed the petitioner from service vide order dated 30.12.1989. The petitioner filed an appeal before the Tribunal under section 24 of the Bombay Primary Education Act, 1947. The Tribunal has decided and dismissed the appeal of the petitioner vide order dated 4.2.1991. This petition has been therefore, filed challenging the order dated 4.2.1991 passed by the Tribunal.

3. It is contended by the learned counsel for the petitioner that section 24 of the Bombay Primary Education Act requires presentation of the appeal before the Tribunal consisting of two persons, namely Chairman of the School Board and Education Inspector of the District. The Tribunal is requird to follow the prescribed procedure for the disposal of its business. It is also required that in case of difference of opinion between members of the Tribunal, the appeal is required to be referred to the Director whose jurisdiction, subject to the provisions of the section shall be final.

4. The learned counsel for the petitioner raised jurisdictional contention and submitted that the provisions of section 24(2) require the decision of the appeal at least by two members consisting of Chairman of the school board and Education Inspector of the District/ Chairman of the Education Committee of the District

Panchayat and the Education Inspector of the district in case of a district within the jurisdiction of the District Panchayat. But in the present case, Chairman and District Primary Education Officer were not present and the appeal has been decided by only one member i.e. District Education Officer. As such, the decision taken by the single memebr is illegal and void in the eye of law. The learned counsel for the respondent could not assail the contention raised by the learned counsel for the petitioner.

5. I have carefully considered the contentions raised by the learned counsel for the parties. From the order dated 4.2.1991, it appears that the Chairman as well as District Primary Education Officer were not present and District Education Officer has passed the impugned order. The provisions of section 24(2) of the Act require that the Tribunal consisting of at least two persons ought to have decided the appeal filed by the petitioner. But in the instant case, the appeal has been decided by one memebr, i.e. District Education Officer. Thus, the decision has not been taken by the Tribunal consisting of members as required under section 24(2) of the Act. Thus, this order does not stand in the eye of law and is liable to be quashed and set aside.

6. Accordingly, this petition is allowed and the order dated 4.2.1991 is hereby quashed and set aside. However, as the matter has not been decided by the Tribunal duly constituted under the law, the matter is directed to be remanded to the Tribunal. As such the matter is directed to be remanded to the Tribunal. The Tribunal duly constituted under section 24(2) of the Bombay Primary Education Act, 1947 is hereby directed to take a decision within a period of six weeks from the date of receipt of this judgment. Rule made absolute accordingly with no order as to costs.

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